

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs April 29, 2008

TONY V. CARRUTHERS v. JIM WORTHINGTON, WARDEN

**Direct Appeal from the Criminal Court for Morgan County
No. 9252 E. Eugene Eblen, Judge**

No. E2007-01478-CCA-R3-HC - Filed June 2, 2008

The petitioner, Tony V. Carruthers, appeals from the trial court's dismissal of his petition for habeas corpus relief, arguing that the court erred by summarily dismissing the petition and not ordering him to be transported to the courtroom for a hearing on the petition. Because the petitioner has failed to comply with the procedural requirements for filing a petition for habeas corpus relief, and because the petition does not state a cognizable claim for habeas corpus relief, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

ALAN E. GLENN, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and THOMAS T. WOODALL, J., joined.

Tony V. Carruthers, Petros, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; Elizabeth T. Ryan and C. Daniel Lins, Assistant Attorneys General, for the appellee, State of Tennessee.

OPINION

FACTS/PROCEDURAL HISTORY

In 1996, a Shelby County jury found the petitioner guilty of three counts of first degree murder, three counts of especially aggravated kidnapping, and one count of especially aggravated robbery and sentenced him to death for each first degree murder conviction. The Tennessee Supreme Court affirmed the petitioner's convictions and sentences on direct review. *State v. Carruthers*, 35 S.W.3d 516, 524 (Tenn. 2000). In 2001, the petitioner filed a *pro se* petition for post-conviction relief which was denied by the post-conviction court. This court affirmed the denial of the post-conviction petition. *Tony Carruthers v. State*, No. W2006-00376-CCA-R3-PD, 2007 WL 4355481, at *1 (Tenn. Crim. App. Dec. 12, 2007), applic. for perm. to appeal filed (Tenn. Feb. 12, 2008).

On September 11, 2006, the petitioner filed a *pro se* petition for habeas corpus relief, arguing that his judgments were void because his indictments were illegally amended. The petition alleged that a grand jury other than that which originally issued the indictments amended the charged offenses from first degree premeditated murder to murder in the perpetration of a felony. The State filed a motion to dismiss which argued that the petitioner failed to comply with the mandatory procedural requirements for filing a habeas corpus petition and that his claim was without merit because his indictments were never amended. On June 25, 2007, the trial court granted the State's motion by written order:

After review of the petition, the respondent's motion to dismiss, and the record in this case, the Court is of the opinion that the petitions in the above cases are not well-taken and that the motions to dismiss should be granted.

Further, counsel for petitioner has submitted motions to withdraw in the above cases. For good cause shown, those motions are GRANTED. Robert L. Vogel is hereby relieved as counsel for petitioner *nunc pro tunc* to May 21, 2007.

ANALYSIS

The petitioner argues that the trial court erred in dismissing his petition without an evidentiary hearing. As we understand, he also contends that the court erred in not transporting him to court to represent himself after his court-appointed attorney withdrew as counsel. The State replies that the trial court properly dismissed the petition because the petitioner did not comply with the procedural requirements for filing a habeas corpus petition, and his petition failed to state a cognizable claim for habeas corpus relief. According to the State, an order of transport was not required because the trial court summarily dismissed the petition without holding an evidentiary hearing. As we will explain, we agree with the State.

Whether the petitioner is entitled to habeas corpus relief is a question of law. Summers v. State, 212 S.W.3d 251, 255 (Tenn. 2007); Hart v. State, 21 S.W.3d 901, 903 (Tenn. 2000). As such, our review is de novo with no presumption of correctness given to the trial court's findings and conclusions. Id.

It is well-established in Tennessee that the remedy provided by a writ of habeas corpus is limited in scope and may only be invoked where the judgment is void or the petitioner's term of imprisonment has expired. Faulkner v. State, 226 S.W.3d 358, 361 (Tenn. 2007); State v. Ritchie, 20 S.W.3d 624, 629 (Tenn. 2000); State v. Davenport, 980 S.W.2d 407, 409 (Tenn. Crim. App. 1998). The judgment of a court of general jurisdiction is conclusive and presumed to be valid, and such a judgment can only be impeached if the record affirmatively shows that the rendering court was without personal or subject matter jurisdiction. Archer v. State, 851 S.W.2d 157, 162 (Tenn. 1993). A void, as opposed to a voidable, judgment is "one that is facially invalid because the court did not have the statutory authority to render such judgment." Summers, 212 S.W.3d at 256 (citing Dykes v. Compton, 978 S.W.2d 528, 529 (Tenn. 1998)). A petitioner bears the burden of

establishing a void judgment or illegal confinement by a preponderance of the evidence. Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000). Furthermore, when “a habeas corpus petition fails to establish that a judgment is void, a trial court may dismiss the petition without a hearing.” Summers, 212 S.W.3d at 260 (citing Hogan v. Mills, 168 S.W.3d 753, 755 (Tenn. 2005)).

The procedural requirements for habeas corpus relief are mandatory and must be scrupulously followed. Hickman v. State, 153 S.W.3d 16, 21 (Tenn. 2004). The formal requirements for an application for habeas corpus relief are codified at Tennessee Code Annotated section 29-21-107, and a trial court “may properly choose to dismiss a petition for failing to comply with the statutory procedural requirements.” Hickman, 153 S.W.3d at 21. In the present case, the petitioner failed to adhere to the mandatory requirements for habeas corpus petitions. First, the petitioner failed to include copies of the judgments of conviction under which he claims he is illegally detained. See Tenn. Code Ann. § 29-21-107(b)(2) (2000). Next, the petitioner failed to state whether the legality of his restraint has already been adjudicated. See id. at § 29-21-107(b)(3). These reasons alone are sufficient to justify the trial court’s dismissal of the petition.

Notwithstanding its procedural deficiencies, the petition also fails to state a cognizable claim for habeas corpus relief. The petitioner alleges that his indictments for first degree murder were amended, but the record does not support this claim. The record contains three facially valid, unaltered indictments for first degree murder. As our supreme court stated in Summers:

The habeas corpus statutes place the burden of proving entitlement to relief upon the petitioner. Tennessee Code Annotated section 29-21-109 provides in pertinent part: “If, *from the showing of the petitioner*, the plaintiff would not be entitled to any relief, the writ [of habeas corpus] may be refused. . . .” (Emphasis added). . . . More recently, . . . we have reiterated that when a habeas corpus petition fails to establish that a judgment is void, a trial court may dismiss the petition without a hearing.

212 S.W.3d at 260 (citations omitted); see also Bobby A. Davis v. Howard Carlton, Warden, No. E2007-01279-CCA-R3-HC, 2008 WL 299067, at *3 (Tenn. Crim. App. Feb. 4, 2008), applic. for perm. to appeal filed (Tenn. Mar. 28, 2008). Because the record before us does not disclose that the indictments were amended, we conclude that the trial court did not err in summarily dismissing the petition.

The petitioner also argues that the trial court erred in not ordering his appellate counsel “to insist on a[n] order to transport the petitioner into court” once his counsel requested to withdraw from representing him. As we understand, he contends that counsel’s withdrawal left him without an advocate on behalf of his petition. However, there is no evidence in the record that the trial court conducted a hearing at which the petitioner was not present, and the petitioner cites no legal authority in support of his claim that a transport order was required. Issues which are not supported by argument, citation to authorities, or appropriate references to the record will be treated as waived in

this court. Tenn. Ct. Crim. App. R. 10(b). Moreover, because the court properly summarily dismissed the petition, no hearing was required. This assignment is without merit.

CONCLUSION

Based on the foregoing authorities and reasoning, the judgment of the habeas corpus court is affirmed.

ALAN E. GLENN, JUDGE